

JOHN M. CASPER,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

A federal prisoner claiming that his “sentence was imposed in violation of the Constitution or the laws of the United States, or that the court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.” 28 U.S.C. § 2255(a).

Rule 4(b) of the Rules Governing Section 2255 Proceedings provides that courts are to promptly examine motions to vacate, along with “any attached exhibits and the record of prior proceedings . . .” in order to determine whether the petitioner is entitled to any relief on the claims set forth therein.


Petitioner has directly appealed his conviction and sentence, and his appeal remains pending. A Section 2255 motion attacking the same conviction and sentence that is the subject of a pending, direct appeal is premature. See United States v. Gardner, 132 F.App’x. 467, 468 (4th Cir. 2005). As such, the Court will dismiss the Petitioner’s motion without prejudice and without addressing its merits. The Petitioner may refile a Section 2255 motion to vacate, if at all, once his appeal has been decided.

ORDER

IT IS, THEREFORE, ORDERED that Petitioner’s Motion to Vacate, Set Aside or Correct Sentence under 28 U.S.C. § 2255 [Doc. 27] is **DENIED** and **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED.

Signed: June 24, 2024


Frank D. Whitney
United States District Judge